

REQUEST FOR COUNCIL ACTION

MEETING

DATE: 1/21/04

15

AGENDA SECTION:
Consent Agenda

ORIGINATING DEPT:
CITY ADMINISTRATOR

ITEM NO.

D-5

ITEM DESCRIPTION: Adoption of Aquila Gas Franchise Ordinance

PREPARED BY:
T. SPAETH

The City and Aquila representatives have been working on the adoption of an ordinance relating to a gas franchise within the City of Rochester. Under the proposed franchise ordinance, the City would grant Aquila a non-exclusive right to operate, construct and maintain a public gas utility. Aquila would have the right to utilize the City's public rights-of-ways and public grounds for the purpose of extending, enlarging, repairing and maintaining its gas distribution and transmission equipment and facilities. The proposed franchise term is for a ten (10) year period from the effective date. The City, at its option, may extend the franchise for an additional ten (10) year period.

Subject to reasonable economic feasibility criteria and the terms of any MPUC approved tariff, Aquila shall provide extensions of its pipes and mains to serve customers within the existing and future limits of the City. In the event that Aquila would refuse to provide service extension (based upon feasibility criteria), they must provide notice of such action to the City. The ordinance also contains language related to construction restrictions and relocation of facilities. The City may require Aquila to move facilities at the company's sole cost if the City is doing a right-of-way or public ground improvement project that is based upon the need to avoid interference and is for a public purpose. In the event that the City requests Aquila to relocate its facilities for a non public purpose or for the benefit of a commercial or private project, then Aquila shall receive payment from the commercial or private developer for the cost of such relocation. A relocation of Aquila facilities within a public right-of-way which is subsidized in whole or in part by the Federal government shall not be an obligation of Aquila if such costs under the prevailing law are the obligation of the Federal government.

The ordinance also contains language relating to indemnification and insurance requirements. Aquila must indemnify and hold the City harmless from any and all claims arising out of the company's negligence or wrongdoing. Under the rates and service section of the ordinance, there is a provision that states that the City reserves the right to regulate the rates and terms and conditions of Aquila's gas service to the City to the full extent permitted by law and to the extent that such regulation is not preempted by the state or federal government. (Please note that the MPUC regulates the provision of gas service and rates charged for service under Minnesota Statutes.). Any time Aquila applies to the MPUC to change its rates or terms and conditions of gas service, it must provide notice of its application to the City. The City may elect to intervene in proceedings before the MPUC or any other court or agency involving Aquila operations on behalf of the City or customers located in the City.

At this time, the City is not imposing a franchise fee as part of the adoption of this ordinance. The ordinance does, however, contain a provision that allows the Council, at its discretion at any time during the term of the ordinance to impose a franchise fee based upon a flat fee and the volumetric rates per 100 cubic feet of gas sold or delivered to retail customers within the current and future limits of the City.

COUNCIL ACTION REQUESTED:

A copy of the ordinance was provided to the Mayor and Council separate from the agenda due to its length.

Approval of ordinance relating to a gas franchise with Aquila, Inc.

COUNCIL ACTION: Motion by: _____ Second by: _____ to: _____

